

MINUTES OF THE REGULAR MEETING OF THE COUNCIL OF THE TOWN OF
WARRENTON HELD ON JANUARY 10, 2006

The regular meeting of the Council of the Town of Warrenton was held on January 10, 2006 in the Town Council Chambers.

Councilmembers present: Mayor George Fitch, presiding, Vice Mayor David A. Norden, Councilmen Birge S. Watkins, John V. Albertella, John E. Williams, Dennie M. Sutherland, Terrence L. Nyhous and John S. Lewis, Jr.

Also present: Kenneth L. McLawhon, Town Manager, Whitson W. Robinson, Town Attorney, and Evelyn J. Weimer, Town Recorder.

The invocation was given by Councilman John E. Williams.

CITIZENS TIME.

Mr. David Gerrish.

Mr. Gerrish, a resident of High Street who works in Warrenton, came forward to request that Council revisit the Comprehensive Plan as it relates to quality of life issues. He asked that Council consider a good mix of residential, retail and non-retail uses when reviewing the ordinances.

Mr. Greg Hunsaker.

Mr. Hunsaker, member of the Design Committee of the Partnership for Warrenton, encouraged Council to vote against the increased height limit from 35 feet to 45 feet for buildings on Main Street since the existing historic fabric of the architecture could be violated and could open opportunities for architecture grandstanding. He also encouraged Town Council to establish a regulatory mechanism which would keep a percentage of the existing streetscape on Main Street as retail. He noted that the intervention of office space created dead zones both from social, architectural and economic standpoint for the life on the streetscape.

PUBLIC HEARINGS.

Adjustment of Zoning Boundary ZMA #05-03 – Carolyn Payne Property. A request to amend the boundary line location at the rear of the Payne property on Sixth Street from CBD to R-6 Residential. The request would move the zoning boundary line five (5) feet to coincide with the property boundary that was relocated at the time of subdivision. In 2004. The parcel is split zoned and this action would unify the property in the R-6 Residential District. The parcel is currently developed as a subdivision lot (GPIN #6984-42-7952) and the owner is concerned that adequate buffering with the adjacent commercial uses will not be afforded under the current split zoning. The Comprehensive Plan identifies the property as Medium Density Residential on the border of the Central Business District, which splits the block.

The Mayor opened the public hearing at 7:05 p.m.

Mr. Norden noted for the record that, due his architectural practice and his involvement with the immediate past owner of the property, he would abstain from participation in the discussion.

Mr. Mothersead stated that the request was by the Sixth Street property owner to adjust the boundary line between the rear property of 24 Sixth Street and the adjacent central business district. He noted that the Sixth and Lee Subdivision was created in 2004 and the prior property owner had adjusted the property boundaries between the commercial and residential pieces to enable additional subdivision and the additional land for the residential subdivision was never exercised. He stated that three lots were created but they wanted to create four lots. He indicated that there was a boundary line adjustment but the zoning line remained in its same location. He further indicated that a problem was created for the property owner in that when the commercial property toward the rear develops it could encroach more upon that residential property. Mr. Mothersead stated that the zoning and boundary line had remained the same. There would be a 25 rear yard buffer but now it is merely a residential buffer which is restricted by no more than 15% of the rear yard or about 11 feet.

The applicant made a formal request to adjust the boundary to rejoin the zoning and boundary line to reestablish the 25-foot setback in protection of their property. He indicated that staff examined the criteria in terms of the Comprehensive Plan and could not find adequate justification based on the other properties also affected and recommended against it. He further indicated that the Planning Commission met and could not come to a conclusion with a 2-2 vote (three Planning Commission members were absent) on a motion to deny a request.

Mr. Albertella asked if by Code the required buffer between commercial and residential districts is 25 feet. Mr. Mothersead stated that 25 feet was required on the commercial side.

Mr. Watkins asked if that was the norm for other properties in the CBD. Mr. Mothersead responded that many of the properties actually developed preceded the current code.

Mr. Albertella asked for elaboration of the underlying principles for such a district. Mr. Mothersead stated that some of the commercial establishments such as a restaurant or grocery facility may be more difficult and one of the ways to separate the uses is by distance or buffering and screening.

Mr. Nyhous asked why when the property line adjustment was made there was not a conformance of the zoning line. Mr. Mothersead stated that Ms. Payne had brought the request forward some time before and it was presented to the Planning Commission. He further stated that the Planning Commission twice in worksessions favored the protection of the commercial development of the downtown area over the need for a 25- foot setback.

Mr. Williams asked what the difference between the boundary line adjustment and the person's property line was. Mr. Mothersead stated that they are one in the same and that the difference was that the zoning line stayed where it previously was. Mr. Williams asked if the Town was involved in the settlement of the property in any way and Mr. Mothersead responded they were but not in any zoning change.

The Town Manager pointed out that some trees had been removed and approximately 129 caliper inches of tree stock had been cut, which would be taken into consideration. He asked the Planning Director to comment regarding the 2.5 feet and 5 feet difference in the strip. Mr. Mothersead stated that when the boundary adjustment was done it was to provide adequate square footage to obtain additional lots and that staff had requested that the property line be set five feet off

of the garage because of its historical significance. He indicated that there was a difference in the location of the zoning line and property line which gave rise to the request for relocation. He further indicated that the commercial property owner would not be responsible for a 25-foot rear setback but would be responsible for a landscape buffer that would be both distance, mitigation and screening.

Mr. Nyhous asked why the property to the north did not require a 25-foot setback and Mr. Mothersead responded that the Code in the Central Business District requires 25 feet but must be adjacent to a residential zoning district and in this case it is not since it is separated by 2.54 feet. He indicated what is immediately adjacent is additional commercial zoning. He further noted that the landscape section indicates that if it is adjacent to residential use, it must provide a buffer and screening irrespective of the zoning classification.

Mr. Sutherland asked if in the beginning it occurred because there was a desire to increase the size so there would be four lots rather than three and, if so, why wasn't it taken care when it went to three lots. Mr. Mothersead stated that the property line was adjusted when the same person owned all of the property and he sold it with the opportunity for four lots. He stated the person who purchased the property divided it into three lots because he felt could better with the quality and the type of housing and he had no interest in boundary adjusting his property and giving property to someone else.

The Town Attorney stated that there were two separate steps that would have had to happen. He indicated that when someone comes in to have a boundary adjustment done administratively, there is not much the Planning Director can do in terms of the zoning aspect of it. He commented that the zoning aspect of it would have required a public hearing and Council action.

Mr. John Orr.

Mr. Orr, civil engineer representing Ms. Carolyn Payne, came forward and noted that he had prepared the subdivision plats for the three lots and had some familiarity with the property. He stated his client was looking for the normal 25-foot setback from commercial buildings to the residential zoning. He noted that he had done a feasibility study on the commercial property in the past for a prospective purchaser of the property and he had drawn the setbacks on the property to see what was available for the parcel. He indicated that the prospective purchaser had indicated that there were no setbacks on the property because it was commercial zoning against commercial zoning. He noted that's when he became aware of the small strip of land being discussed. He indicated that he had been a friend of the Paynes for many years and he had suggested that they request the "normal" 25-foot setback from the Town. He felt it was the clear intent of Section 18.5 to provide a clear delineation between the commercial and residential uses. He requested that the intent of the zoning ordinance be met and there be a 25-foot setback.

Mr. Orr stated that the buffer required would be about 11 feet. Mr. Williams asked if it was Mr. Orr's opinion that it was a simple matter to seek the setback with the current policy in effect. Mr. Orr indicated if the current property owner felt the 25-foot setback unduly hindered the piece of property they could request a waiver from the setback according to established procedures. He further indicated that he was not saying that it was easy or a given.

Ms. Carolyn Payne.

Ms. Payne, property owner 24 S. Sixth Street, came forward noting that the talk was that the commercial building would be a two story at least 35 feet tall and having a building 35 feet tall sitting 10 feet from her property line, fencing and landscaping could not provide an adequate buffer. She noted that she felt the only thing that could mitigate the building would be distance and that there lot was small, .2 of an acre which did not leave much distance between her back door and the property line. She indicated that she was surprised at finding out that there was dual zoning on the property. She asked that Council make sure that their property rights are protected.

Mr. Bill Webber.

Mr. Webber noted that he and his wife were the owners of lot three which bordered the Payne property and are affected by the matter. He indicated that he had seen several surveys of the area and none were consistent. He felt that there was an administrative error on someone's part. Mr. Webber asked how the prospective owners of the property become aware that there was a zoning issue when apparently it is unique in the whole town.

Mr. Robinson, Town Attorney, stated that it is not unique and it occurred all over the town and it has been part of the cleanup process. He stated that secondly there was due diligence on a homeowner's part to find out what the zoning is on their property.

Mr. Watkins noted to Mr. Webber that there was quite a bit of property around town that is split zoned and it was not uncommon. He indicated that the Town was reviewing their ordinances and part of the process was to amend the zoning map.

Mr. Webber stated that at the Planning Commission meeting there was reference to checking to have the Town Attorney determine if the boundary line was properly vacated and that Mr. Robert Rice had asked the question. Mr. Mothersead noted that the consideration was whether or not the vacation of a property line had a direct effect on a zoning line. He stated that he clarified for Mr. Rice that boundary line as administrative and zoning lines are only eligible to be altered by the Town Council.

The Town Attorney stated that in the effort to clean up the split zoning all around Town, the Planning Commission took the specific property into consideration and Mr. Mothersead stated that they did at his request.

Mr. Webber stated that he supported the Paynes' request and felt it was the fair and reasonable thing for all three property owners. He further noted that the lot has been cleared and a permit has not been issued to do so.

Mr. Nyhous asked if there were five feet separating Mr. Webber's property and the property line. Mr. Mothersead stated that it was more than that and would be about 16 feet. He indicated it would not have an effect on the usability or development of the property because the CBD provides for single family development consistent with the bulk regulations of the R-6 district.

Mr. Albertella asked if the corner property currently used as a residence could be redeveloped into something commercial and therefore bring the issue back. Mr. Mothersead stated it could and there would be no issue of the 25 feet because it is an existing structure. Mr. Albertella

asked if the structure was removed and the property owner intended to replace it with a restaurant or office building, the Town would be in the same position. Mr. Mothersead stated that new development would be the same situation since there would not have to be 25 feet because there is a substantial distance that is commercial and not residential. Mr. Albertella asked if then the setback would be less on the redeveloped CBD property than that presently being considered. Mr. Mothersead stated that it would be a maximum of 15%.

The Mayor called for those citizens to speak for or against the application.

Mr. Henry C. Day.

Mr. Day noted that he represented the adjacent property owners, Mr. and Mrs. Scott Shaeffer. Mr. Day noted that there was nothing wrong with adjusting boundaries and that neither the Shaeffers nor the Paynes were at fault. He indicated the process was to submit a plat to the Planning Department, you have to meet certain criteria and if you do, it is an administrative matter approved by the Planning Department. He stated the Planning Director cannot do is move the zoning lines. Mr. Day asked the Council to table the matter for 60 days to allow for a solution to the problem. He indicated it virtually made it impossible to use a portion of the property because it was only 16 feet. Mr. Day indicated that he was not sure that a waiver was permissible. He read from Section 30-5 of the zoning ordinance.

Mr. James Tucker.

Mr. Tucker came forward and noted that the best use of the property was being explored. He stated that the Fifth Street area would be the most opportune area for retail.

Mr. McLawhon asked if he would be addressing the 129 inches of remediation with respect to the cut trees and landscaping. He stated under the zoning ordinance there was a remediation requirement to replace these trees and landscaping and was not sure if he had enough room on site. Mr. Tucker stated he would landscape to replace trees lost with better trees which are identified in the Town's ordinances.

Mr. Lewis noted that it seems that the Paynes have two concerns: 1) distance of the setbacks and the height of the structure to be built. Mr. Lewis hoped that during the design process special consideration be given to the height of the structure in the rear. Mr. Tucker stated that the zoning ordinance would allow the structure to be 45 feet high which would equate to four stories but a two story building is being planned.

Mr. Lewis asked if a flat roof had been considered. Mr. Tucker stated that a sloped roof may be more attractive to the residential neighborhood than if it is flat. Mr. Tucker stated he would be responsible for the appearance of the building and he did not intend it to be something that anybody would not like to see in the neighborhood.

There being no other citizens to speak in opposition to the request, the Mayor closed the public hearing at 7:55 p.m.

Mr. Lewis moved that the Council table the request for 60 days with the caveat that the property owner of the property in question does not submit a formal site plan during the 60 days until the Council not have time to rule on the matter.

Mr. Tucker asked if the applicant could go through the preliminary application so some interpretations of the ordinance could be investigated. Mr. Day stated he had recommended to the owner and architect to start pre-submission meetings to try to get sketches in because some of the things to talk about depend upon what he and his department have to say and they are going to need something to work from.

Mr. Williams seconded the motion. Mr. Nyhous noted he wanted to make a point that if Mrs. Payne signed over the ownership of the land of the property to the less of her they would have a setback of 22.5 feet.

On a vote of 6-0, (for: Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis) with one abstention (Norden), the motion passed.

CONSENT AGENDA.

- a. Approval of Council minutes of the regular meeting held on November 8, 2005.
- b. Financial statement and staff reports and Board and Commission minutes.
 - 1) Financial statement for period ending December 31, 2005.
 - 2) December statement of accounts paid.
 - 3) Miscellaneous staff reports.
- c. Receive minutes of the November 16, 2005 meeting of the Planning Commission and minutes of the February 24, 2004, March 23, 2004, July 27, 2004, August 5, 2004, August 24, 2004, September 28, 2004, and November 23, 2004 meetings of the Architectural Review Board.
- d. **Letter of Credit Reduction – Richard’s Kingsbridge South.**
Request for reduction of the Letter of Credit (No. 4016790) held for development of the townhouse subdivision (SDP #03-20). The original bond amount was \$100,025.14 and this is the second request for reduction since the bond was placed on April 2005. The bond currently stands at \$27,322.25 (37.5%) as approved by Council on November 8, 2005. The project has been inspected and is eligible for reduction to a 12 month Maintenance Bond of \$15,003.77 or 15.0% of the original bond, as requested.
- e. Consideration of request to close streets for the 2006 Heritage Day event scheduled for September 30, 2006.
- f. Consideration of resolution nominating Route 15 in the Town of Warrenton for Inclusion in the State’s Scenic Byway System.

Mr. Watkins commented concerning the Architectural Review Board minutes which go back to 2004 and asked that they be kept more up to date. Mr. Sutherland responded the Mr. Andrew Hushour had been trying to catch them up before leaving employment with the Town.

Mr. Albertella noted that the resolution to nominate Route 15 as part of the Scenic Byway System seemed to indicate the Route 15 was already considered a Scenic Byway.

Mr. Watkins stated that the resolution came up as a result of the “Journey Through Hallowed Ground” organization. He further stated that numerous other jurisdictions have passed similar resolutions in support of Journey Through Hallowed Ground and since Route 15 does through the middle of the Town (Main Street) and a portion on the eastern part of Town.

Mr. Albertella stated that the resolution notes that the Town “is designated” as a scenic byway, not that it should be. Mr. McLawhon indicated that would be an easy modification to make to the resolution. Mr. Albertella asked what the implications of the designation would be with respect to property rights, etc. Mr. Lewis noted that it was his understanding that the intention of the scenic byway designation is to keep the roadway and the infrastructure on the roadway similar to what exists nor are there opportunities for any wide scale development on that roadway which would cause an increase in the structured byway. Mr. Albertella asked that a little research be done concerning possible restrictions before the matter is considered by Council.

Mr. Albertella moved that the Consent Agenda be approved with the removal of the resolution to nominate Route 15 as part of the Scenic Byway System, that it be reworded to reflect whether Route 15 is currently a Scenic Byway and that staff be directed to conduct research to inform Council of any restrictions or other incursions into personal property rights. Mr. Williams seconded the motion and Council approved on a vote of 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

NEW BUSINESS.

Consideration of resolution establishing standards for the appropriation of Town funds for Not-for-profit organizations.

Mr. Nyhous stated that the resolution presented is not the resolution the committee agreed to present to Council. Mr. Nyhous indicated that several Councilmembers met and decided that more and better information was needed on nonprofits that the Town supports and to include any new nonprofits who would approach the Town for support. He further indicated that a listing of questions had been forwarded to each organization/agency requesting contributions and staff would compile responses for Council to review.

On a motion by Mr. Nyhous, seconded by Mr. Williams, Council voted 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis) to defer consideration of the resolution until the committee meets once more.

Consideration of resolution recognizing the accomplishments of Kay Macdonald as a member of the Town of Warrenton’s Architectural Review Board.

The Mayor called upon Mr. Sutherland as ex-officio member to the Architectural Review Board to present the following resolution:

**A RESOLUTION RECOGNIZING THE ACCOMPLISHMENTS OF KAY MACDONALD
AS A MEMBER OF THE TOWN OF WARRENTON'S ARCHITECTURAL REVIEW
BOARD**

WHEREAS, the Town of Warrenton is a community which is proud of its rich and varied historical and architectural heritage; and

WHEREAS, the Town Council of the Town of Warrenton recognizes the need to preserve the historic character of the community as a means of fostering economic development and maintaining the quality of life for the Town's current and future citizens; and

WHEREAS, in 1981 the Town Council chose to organize and support the formation of an Architectural Review Board under direction of State statute to assist in preservation of the Town's public and private historic resources; and

WHEREAS, Ms. Kay Macdonald has been dedicated to this effort as a member of the Town's Architectural Review Board serving continuously in this capacity since December 1998 –a span of nearly seven years; and

WHEREAS, during the course of Ms. Macdonald's tenure as a member of the Architectural Review Board, the Board faced many difficult issues concerning the style and mass of construction and renovation projects proposed within the Town's Historic District; and

WHEREAS, the Board, with Ms. Macdonald as a significant influence and source of knowledge, dealt with each issue on an individual basis, working with the property owners to achieve their objectives but keeping the integrity of the district in mind;

NOW THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Warrenton, does hereby officially recognize Ms. Kay Macdonald for her devoted service to the Town of Warrenton and, more particularly, to the preservation of its historic assets; and

BE IT FINALLY RESOLVED, that the Town Council of the Town of Warrenton does hereby officially extend its appreciation on behalf of the community's citizens to Kay Macdonald for her dedication and public service.

On a motion by Mr. Norden, seconded by Mr. Sutherland, the resolution was adopted on a vote of 7-0 (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

UNFINISHED BUSINESS.

Special Use Permit #05-04, Schaeffer Living Trust. A request for an apartment in an accessory structure in the R-6 District as provided for in Article 9-1.2 (dwelling in an accessory building). The property is located at 272 Waterloo Street (GPIN 6984-14-4648) adjacent to the Warrenton Middle School and is 0.4817 acres. It contains a single family dwelling and storage shed (to be demolished). The proposal is to construct a garage with a second-floor dwelling above occupying 672 square feet as a rental unit. The owner is Scott Schaeffer, trustee. The Warrenton Comprehensive Plan identifies the area as Medium Density Residential.

Mr. Mothersead, Planning Director, came forward and noted that at the last meeting Mr. Shaeffer had requested a home professional office but it was discovered that there was a business operation being run in the house. He indicated staff had met with Mr. Shaeffer and he had applied for a home professional office and to have as many as one employee come in and help with the business. Mr. Mothersead stated that since the house is located in a Public, Semi Public zoning district, the area was an appropriate location for it.

Mr. Norden asked if the home professional office designation required those who apply to also live in the property.

Mr. Mothersead stated that that was a requirement of the zoning designation and that Mr. Shaeffer was in the process of moving into the structure from his home in South Wales. He also would relocate to Florida at some point in time.

Mr. Albertella asked if granted the home professional use would survive their ownership in perpetuity. Mr. Mothersead stated that it would but would have to meet the requirements of the approval and would expire at the end of a two-year period.

Mr. Norden noted that the Shaeffer's had just moved out of the property and questioned whether he would be moving back. Mr. Lewis moved to table the request for 30 days and requesting that Mr. Shaeffer attend a worksession or the Council meeting. Mr. Watkins seconded the motion and Council approved on a 7-0 vote (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

REPORTS AND COMMUNICATIONS.

The Mayor recognized Mr. Nyhous. Mr. Nyhous noted that there had been comments from businesses along West Shirley Avenue concerning odors being emitted from a business in the area. Mr. Nyhous indicated that the Town Attorney had researched odor ordinances and he had also reviewed ordinances from other jurisdictions. He suggested that the proposed ordinance should include odors associated with maintaining animals, livestock, fowl, etc.

Mr. Nyhous moved that the staff study the subject and provide information to Council at the January 19 worksession so that a public hearing could be set for the next month's Council meeting. Mr. Albertella seconded the motion and on a 7-0 vote of Council the motion passed (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

Mr. Albertella called Council attention to visual blight with items being left out in open storage in his ward and noted that he had requested an ordinance to address it.

Mr. Albertella moved that staff be directed to provide a report on the proposed covered storage amendment he had drafted and circulated to Section 8, Article 3, titled "Condition of Premises." Mr. Nyhous seconded the motion.

Mr. McLawhon stated that he and the Town Attorney had talked and the topic came to the forefront several months ago when a citizen called attention to the problem. He further stated that the consensus was that it was a sweeping proposal which was separate and apart from the current automotive ordinance. He suggested that staff meet with Mr. Albertella to discuss the matter unless Council wants to further discuss the particular elements and level of comfort with what would be

covered. Mr. McLawhon indicated that he was not sure that staff would have the time to do what Mr. Albertella asked by the January 19 worksession. Mr. Albertella noted that he did not mean for the research to be completed by that time but a 60-day timeframe would be sufficient.

On a vote of 7-0 the motion was approved (for: Norden, Watkins, Albertella, Williams, Sutherland, Nyhous, Lewis).

REPORTS AND COMMUNICATIONS.

- a. Report from Town Attorney.

The Town Attorney noted that he had nothing further to report.

- b. Report from Finance Committee.

Mr. Watkins reported that the current budget was received and was well done.

- c. Report from the Police Committee.

Mr. Lewis, Chairman, indicated that there was no report.

- d. Report from the Public Information Committee.

Mr. Albertella noted that there was no report.

- e. Report from the Public Works Committee.

There was no report.

- f. Report from the Utilities Committee.

Mr. Nyhous stated that there was no report.

- g. Report from Planning District 9 Representative.

Mr. Albertella stated that PD 9 had submitted to the General Assembly the legislative priorities and there were seven items that they were working on the Town's behalf. He noted that two among them was 1) the region urged the General Assembly to address Virginia's growing transportation needs, and 2) the region supported appropriate authority to allow the coordinated provision of public facilities with minimum impact on taxpayers by by-right zoning so that the supply of public infrastructure can match the demand created by new development. He further noted that the Commission believed that there was a need to protect and increase the supply of workforce housing available to employees of companies of all sizes and industries as well as government employees.

He alerted that there was a PD Workforce Housing group meeting on January 13, 2006 at 2 p.m. in Culpeper. He indicated that the group had recommended that each county prepare an inventory of county-owned surplus land with the objective being

to identify land for workforce housing and that each town and county work to increase densities in appropriate areas in order to provide more cost effective housing units. Also discussed was how to investigate how to reduce barriers to workforce housing.

- h. Report from Transportation Safety Commission.

Mr. Watkins, Chairman, stated there was no report.

- i. Report from Economic Development Advisory Committee representative.

There was no report.

- j. Report from Recreation Committee.

Mr. Sutherland commented that there was a high turnout to the Sunday event and dedication of the ballfields at the recreation center site. He thanks the Mayor for his part in planning the event.

- k. Report from Liaison Committee representative.

There was no report.

- l. Report from the Parking Committee.

There was no report.

- m. Report from the Town Manager.

Mr. McLawhon thanked the Public Works Department for the help in planning the Sunday recreation center event.

COUNCILMEMBERS' TIME.

Mr. Norden urged that worksessions be held prior to Council meetings so matters could be discussed in advance.

There being no further business, the meeting adjourned at 8:30 p.m.

Evelyn J. Weimer, Town Recorder